STATE OF CALIFORNIA **BUSINESS, TRANSPORTATION AND HOUSING AGENCY** DEPARTMENT OF CORPORATIONS

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TO: Fresh Fruit Bouquet Company Franchising LLC Fresh Fruit Bouquet Company James Nortaris, President 72 Hillside Avenue Williston Park, New York 11596 www.freshfruitbouquetcompany.com and www.ffbc.com

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DESIST AND REFRAIN ORDER (For violations of section 31110 of the Corporations Code)

The California Corporations Commissioner finds that:

- 1. Fresh Fruit Bouquet Company Franchising LLC ("FFBCF") is a New York limited liability company formed in May 2005 that does business as "Fresh Fruit Bouquet Company" from its headquarters at 72 Hillside Avenue, Williston Park, New York 11596. FFBCF represents it has a website at www.freshfruitboquetcompany.com, but that website directs one to www.ffbc.com instead.
- 2. Fresh Fruit Bouquet Company, Inc. ("FFBC") is a New York corporation formed in August 2004, which is also located at 72 Hillside Avenue, Williston Park, New York 11596. FFBC along with POSNet Accounting Systems, LLC and FFBC Designs, Inc., are affiliates of FFBCF.
- 3. FFBC owns the federally registered trademarks, copyrights, proprietary information and other intellectual property associated with the Fresh Fruit Bouquet Company concept and has licensed the use of its marks and other intellectual property to FFBCF for use in franchising.
- 4. FFBCF sells franchises of FFBC stores that feature designed arrangements and gift baskets whose primary ingredients are fresh fruit and chocolate. Payment of an initial franchise fee of \$25,000 is required at the time the franchise agreement is signed. Additionally, FFBCF's franchisees are required to pay the following fees: royalty fees are paid based on a store's weekly gross sales, a marketing advertising fee, training fees for employees, fees for products, services, computer software support, upgrades, on-line ordering, website, audit, annual convention, testing, report preparation and operations manuals. Additionally, a renewal, management or transfer fee may be required.

- 5. James Nortaris is the founder, president and chairman of the board of FFBCF.
- 6. On May 10, 2006, FFBCF first filed with the California Department of Corporations ("Department") an application pursuant to Corporations Code section 31111 for registration of FFBCF's offers and sales of franchises in California. Thereafter, the Department reviewed the contents of FFBCF's application and documents provided in connection with its application.
- 7. Based upon the contents of the application and document filed by FFBCF, the Department approved FFBCF's registration on June 2, 2006, and informed FFBCF that its franchise registration in California was of a limited duration. The Department's registration order to FFBCF entitled, "Order Designating Registration Period," unequivocally states that the registration of the offer and sale of franchises requested in FFBCF's application will terminate on October 18, 2006.
- 8. The Department not only informed FFBCF of the expiration date by the above-described order but also did so by a transmittal letter dated June 2, 2006. The Department's transmittal letter states: "Please note that pursuant to section 31121, a registration renewal application must be filed no later than 15 business days prior to the expiration of the registration."
 - 9. No timely registration renewal application was filed by FFBCF with the Department.
- 10. Although on May 10, 2006, FFBCF filed a notice of exemption for internet advertisements pursuant to California Code of Regulations, title section 310.156.3, that exemption was unavailable to FFBCF after its registration expired on October 18, 2006.
- 11. The Uniform Franchise Offering Circular ("UFOC") Guidelines of the North American Securities Administrators Association, Inc. ("NASAA") requires that franchise applicants seeking to register their offerings comply with NASAA's UFOC Guidelines, one of which is disclosure of litigation. The Department requires that franchise applicants conform to these NASAA UFOC Guidelines pursuant to Corporations Code section 31114 and California Code of Regulations, Title 10, sections 310.111 and 310.114.1.
- 12. During relevant time periods FFBCF's did not timely disclose to the Department the existence of litigation filed by Edible Arrangements International, Inc., in United States District Court, District of Connecticut, Case No. 3:05-CV-00197 (AWT), or in United States District Court, Central District of California, Case No. CV 06-5945 FMV (PJW). FFBCF did not timely disclose to

the Department that the litigation filed in the United States District Court in the Central District of California sought and obtained an injunction that ordered FFBCF, from, among other activities, soliciting prospective franchisees, or otherwise advertising or marketing their franchise in California until they have properly registered with the State of California. FFBCF's offering circular filed with the Department on May 10, 2006, did not disclose to potential franchisees the existence of any litigation.

- 13. After October 17, 2006, all offers and sales of franchises by FFBCF in California, including FFBCF's "secure online franchising application," are unregistered under the Franchise Investment Law and are not exempted under that law.
- 14. The offers or sales of franchises by FFBCF during all relevant times were made by means of written and oral communications with included untrue statements of material fact and omitted to state materials facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading. Specifically, FFBCF through its offering circular and its website www.ffbc.com omitted disclosure about the existence of litigation, the lack of effective registration with the Department after October 17, 2006 and FFBCF's failure to operate in accordance with California law.

Based upon the foregoing findings, the California Corporations Commissioner is of the opinion that Fresh Fruit Bouquet Company Franchising LLC, doing business as Fresh Fruit Bouquet Company and James Nortaris offered or sold franchises in California, that are subject to registration under the Franchise Investment Law, without the offer first being registered, in violation of Corporations Code section 31110.

Based upon the foregoing findings, the California Corporations Commissioner is also of the opinion that Fresh Fruit Bouquet Company Franchising LLC, doing business as Fresh Fruit Bouquet Company and James Nortaris have offered and sold franchises in California by means of written and oral communications, which included untrue statements of material fact and which omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, in violation of Corporations Code section 31201.

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Pursuant to section 31402 of the Corporations Code, Fresh Fruit Bouquet Company Franchising LLC, doing business as Fresh Fruit Bouquet Company and James Nortaris are hereby ordered to desist and refrain from the further offer or sale of franchises of Fresh Fruit Bouquet Company Franchising LLC, doing business as Fresh Fruit Bouquet Company unless and until the offers have been duly registered under the Franchise Investment Law or unless exempt. This Order is necessary, in the public interest, for the protection of investors and consistent with the purposes, policies and provisions of the Franchise Investment Law. Dated: December 11, 2006 Los Angeles, California PRESTON DuFAUCHARD California Corporations Commissioner ALAN S. WEINGER **Lead Corporations Counsel Enforcement Division**